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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/413,105	10/06/1999	JAMES L. MARTIN JR.	149-0031US	1590
29855 7590 07/07/2009 WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI, L.L.P. 20333 SH 249 6th Floor HOUSTON, TX 77070				
			EXAMINER BOCCIO, VINCENT F	
			ART UNIT 2158	PAPER NUMBER
			MAIL DATE 07/07/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/413,105

**Applicant(s)**

MARTIN, JAMES L.

**Examiner**

Vincent Boccio

**Art Unit**

2158

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Amend & Resp of 4/17/2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,7-18,20,21,24-35,37,38 and 41-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3,4,7-18,20,21 and 24-34 is/are allowed.
- 6) ☒ Claim(s) 35,37,38 and 41-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 2158

**Response To Amendment**

The primary examiner apologizes with respect to the missing deemed 101 claims previously presented, deemed non-statutory.

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 35, 37-38, 41-52 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With respect to the originally Filed Specification Page 16, defines the claimed, "carrier

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Various embodiments further include receiving or storing instructions and/or data implemented in accordance with the foregoing description upon a carrier medium. Suitable carrier media include storage media or memory media such as magnetic or optical media, e.g., disk or CD-ROM, as well as signals such as electrical, electromagnetic, or digital signals, conveyed via a communication medium such as networks 102 and/or 104 and/or a wireless link.

Claims 35, 37-38, 41-52 recite and are directed to:

o a carrier medium and/or computer readable medium or product claims, directed to media,

appear clearly to be Nonstatutory in view of the specification which includes the definition of carrier Medium or Medium or Media to include the definition, SIGNALS e.g. wireless link, networks, digital signals, being magnetic or optical, wherein the optical, as well as magnetic may be a Disc/Disk or not, as understood.

The claims above are deemed, Non-Statutory in view of the specification.

The specification and well as the claims is strongly suggested to be amended.

The wording, "carrier", is suggested to be removed from the claims.

The claim language used is in the claims and correspondently in the specification is required to be limited to statutory subject matter, in this case the product claims, corresponding to program instructions are required to be stored on a medium, as defined by the specification to be statutory.

Examples of statutory media/medium, e.g. CD-ROM, DISK, DISC

Applicant is in possession of language such as:

Storing, disk, CD-ROM, storage, memory, medium

The examiner suggests using language as provided in the original specification and amend to define statutory vs. non-statutory media groups and claim the statutory group.

**Allowable Subject Matter**

2. Claims 1, 3, 4, 7-18, 20, 21 and 24-34 allowed.

**Contact Information**

Any inquiry concerning this communication or earlier communications should be directed to the examiner of record Vincent F. Boccio whose telephone number is (571) 272-7373.

The examiner can normally be reached on between Monday-Thursday between (7:30 AM to 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammad Ali, can be reached on (571) 272-4105.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system:

"<http://portal.uspto.gov/external/portal/pair>"

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vincent F. Boccio/  
Primary Examiner